



SCOPING STUDY

ON

GAY, LESBIAN, BISEXUAL AND TRANSGENDER (GLBT) ISSUES IN GHANA

SUBMITTED BY

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LIST OF ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ARV	Antiretroviral
CBOs	Community Based Organizations
CEPEHRG	Center for Popular Education and Human Rights
CETAs	Community Education Teaching Assistants
CHRAJ	Commission on Human Rights and Administrative Justice
CIDA	Canadian International Development Agency
CRC	Constitution Review Commission
CSOs	Civil Society Organizations
DACF	District Assemblies Common Fund
DANIDA	Danish International Development Agency
DAWAH	Dawah Academy
DFID	Department for International Development
DPs	Development Partners
ECOWAS	Economic Community of West African States
FBOs	Faith Based Organizations
GALAG	Gay and Lesbian Association of Ghana
GESI	Gender Equality and Social Inclusion
GFD	Ghana Federation of the Disabled
GHANEP	Ghana Network for Peace Building
GLBs	Gay, Lesbian and Bisexuals
GLBTs	Gay, Lesbian, Bisexuals and Transgender
HIV	Human Immo-Deficiency Virus
IEA	Institute of Economic Affairs

JHS	Junior High School
LADA	Law and Development Associates
MFWA	Media Foundation for West Africa
MMDAs	Metropolitan, Municipal and District Assemblies
MDBS	Multi-Donor Budget Support
NGOs	Non-Governmental Organizations
NNED	Northern Network for Education Development
PMT	Programme Management Team
PIAC	Public Interest Accountability Committee
PLHIV	People Living with HIV/AIDS
PWDs	Persons With Disabilities
RAVI	Rights and Voice Initiative
SHS	Senior High School
STDs	Sexually Transmitted Diseases
SWOT	Strengths, Weaknesses, Opportunities and Threats
UNHCR	United Nations High Commission for Refugees
USAID	United States Agency for International Development
WAAF	West Africa Aids Foundation

EXECUTIVE SUMMARY

Long repressed as an activity and a topic for public discourse, GLBT issues came forcefully to the fore in Ghana in 2006 following a proposed conference on homosexuality planned for that year. Intense and virulent political, religious, and public outcry botched the conference. Some five years later, Ghana is again experiencing heightened interest in, reactions to, and extensive public debate on GLBT issues. From the Presidency, through Parliament, to CSOs and the general public, divergent, sometimes contradictory and inconsistent positions, are taken and statements made on the issue, using the media (print, broadcast and internet) as the primary mode of communication. Public discussion of GLBT issues has experienced two peaks in the summer of 2011 and in the last quarter of that year.

In October 2011, STAR-Ghana commissioned this coping study on GLBTs in order to better understand the issues, decide if it wants to do any programming in the area, and if so, how best it may work on those issues in Ghana.

More specifically, this scoping study attempts to:

- a. Describe the demographics and practices of GLBTs in Ghana;
- b. Clarify the constitutional and legal position in Ghana relating to persons with different sexual orientations, including GLBTs;
- c. Assess the official and unofficial positions of the Drivers of Change in Ghana on GLBT issues; and
- d. Provide an inventory of options for STAR-Ghana vis-à-vis GLBT issues, whilst noting the strengths, weaknesses, opportunities, and threats of the options.

Basing itself principally on library-based and internet research; observation of GLBT practices in Ghana; and complementary interviews with Gays, Lesbians, and Bisexuals and also with key Drivers of Change in Ghana, the study makes the following findings and conclusions:

1. DEMOGRAPHY AND ETHNOGRAPHY OF GLBTs IN GHANA:

- a. There are a growing number of Gays, Lesbians, and Bisexuals (GLBs) in Ghana, with conservative estimates putting the number of persons in Ghana who have been or are involved in same-sex relationships at some 10% of the population or

approximately 2.5 million people. According to the Gay and Lesbians Association of Ghana (GALAG), some 2 million Ghanaians have been involved in same sex sexual relationships, a figure that is close to 10% of Ghana's population. During the past year, 2,000 active homosexuals have been identified in Accra and Tema alone, and some 8,000 of them were recently registered by just one NGO in the Western Region and in some parts of the Central Region. According to Gayghana.com, a website for Ghanaian homosexuals, out of the 200,000 active gays in Ghana, forming about one percent of the total population, only 40,000 have registered at the website. All these figures must be viewed in the face of growing homophobia that is sending the practice underground. In the words of the website, "Homosexuality is on the increase in Ghana despite police brutality against homosexuals who are arrested and brought to the police stations." The general conclusion is that the numbers are far greater than these estimates, and the projection is that they will continue to increase.

- b. There is no evidence that there are transgendered persons in Ghana who have undergone medical procedures for the purpose, although the practice of persons of one gender dressing and carrying themselves around as if they were of the opposite gender is widespread in the Gay and Lesbian community in Ghana.
- c. There appears to be a heavy concentration of GLBs in four of the five largest cities in Ghana: Accra, Kumasi, Tema-Ashiaman, and Sekondi-Takoradi, with evidence of GLB clubs, private events, public events, and even marriage celebrations. Again, the evidence is that the social bonding of GLBs is likely to grow stronger, especially in the face of public attacks on them.
- d. Second cycle boarding educational institutions, especially single-sex schools, and correctional facilities which are traditionally segregated on gender lines, experience a lot of GLB activities.

2. GLBT PRACTICES IN GHANA:

- a. GLB practices in Ghana are quite standard, with the following key characteristics:
 - i. Aside GLBs who argue that they have a different sexual orientation by nature or by choice, there is a growing army of, mainly male youth, who practice it as prostitutes, serving an internal and affluent market and external visiting clientele. About 50% of gays in Ghana are said to be of this category.
 - ii. There appear to be few gays and lesbians who are strictly gay or lesbian. Most of them are actually bisexual, from commercial sex workers who swing both ways; through those who claim to be naturally bisexual or choose to be bisexual; to those who are married, maintain a family, but are discreetly gay or lesbian.

- iii. There are quite a number of gay and lesbian clubs in Accra, Tema, Kumasi, and Sekondi-Takoradi and an online "Gully Magazine", catering to homosexual issues. There is also a Gays and Lesbians Association of Ghana (GALAG), which works to connect and convene gays and lesbians, and generally to promote the interests of their members.
- iv. There are reports and testimony of GLBs facing harassment by the police; losing their jobs when they "come out"; being turned away from health facilities; and having to endure assaults, insults, and general disregard from the public.

3. THE CONSTITUTIONAL AND LEGAL POSITION ON GLBTs IN GHANA:

- a. The 1992 Constitution contains a broad antidiscrimination clause in its Article 17, under which many minority interests have sheltered since the Constitution came into force. The interpretation of the scope of that clause by the Supreme Court, or by state officials who enforce antidiscrimination, holds the key to the contraction or expansion of that clause and its implications for marginalised groups such as GLBTs.
- b. The Constitution also contains an impressive Bill of Rights in its Chapter 5, including Article 33(5) which provides that the list of rights in the chapter is not exhaustive, and incorporates other rights "which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man". GLBT rights may be stolen in under this provision, although the fact that GLBT rights are contested the world over may make it fail to satisfy the "inherent in a democracy" test.
- c. The Criminal Code, in its Section 104 criminalises "unnatural carnal Knowledge", a term that is generally understood to cover sexual behaviour other than the penetration of a naturally born male's penis into a naturally born female's vagina. Aspects of GLBTs are caught by this provision, as are many sexual practices of heterosexuals. In practice, the only persons who have been prosecuted or face threats of prosecution under this law are those who engage in bestiality and GLBTs.
- d. The marriage, adoption, and related laws of Ghana, as transplanted from England and the Middle East, are still pretty conservative and would not recognise homosexual marriages. It is arguable that the limited practice of homosexual marriages in various customs in Ghana may still be valid under the protections offered to Customary Law in the 1992 Constitution.

- e. It is safe to conclude that aside the particular proscription of types of sexual activity, marriage, adoption, and related activities of GLBTs in Ghana, they are entitled to all the rights that all other citizens enjoy.

4. THE DRIVERS OF CHANGE IN GHANA AND GLBT ISSUES:

- a. There is overwhelming public opposition to GLBT practices in Ghana, mostly descending into hate speech and the language of cleansing. The impetuses for this are the following arguments:
 - i. The religious argument which says that the Bible and the Qur'an and generally God's law forbids the practice, and so it should not be condoned in Ghana. This argument is often extended to say that marriage is ordained by God as between one man and one woman, and that a family is to be only so constituted, plus children. Some variants of this argument stress that the primary purpose of sexual activity is procreation, and so non-procreative sex is to be abhorred.
 - ii. The cultural purity argument which states that GLBTs are undesirable and dangerous warts on the purity and beauty of African culture who need to be excised.
 - iii. The cultural imperialism argument which states that GLBTs are a foreign importation that is reminiscent of colonial and neo-colonial cultural domination, and need to be resisted in the same manner and with even greater force.
 - iv. The legal argument which states that GLBT practices are illegal in Ghana, and so those engaging in them need to be punished and put away.
 - v. The health argument which says that GLBT practices have deleterious health effects, including HIV/AIDS, other sexually transmitted diseases, anal cancer, and rectal bleeding.
 - vi. The bestiality and human superiority argument which says that humans are superior to other animals and should not engage in practices that are akin to what beasts do. Some argue that even beasts are not homosexual, and so humans should not be.
 - vii. The human rights relativism argument, which says that human rights are relative to cultures and seasons, and so each culture and season, should decide which human rights to promote, and in any event, which human rights to promote in the light of other competing and compelling human rights and in the face of limited resources. Such an analysis, under this argument, would immediately exclude the rights of GLBTs.

- b. After initially vacillating on the issue, including an official clarification this year that he did not condemn GLBs in a speech he previously gave, the President, and by extension the Cabinet, has now publicly declared that he would not back any attempt to legalise the practice in Ghana. A deep assessment of this position shows that it is influenced by at least three factors:
 - i. A desire by a President, who is constantly described as weak, to assert his authority against what is regarded as cultural imperialism, with the declaration by David Cameron that the UK may halt aid to countries, including Ghana, which violate the human rights of GLBTs.
 - ii. A need to stay politically correct, one year to Presidential and Parliamentary elections in the light of overwhelming public anger and opposition to GLBTs, especially as the elections are projected to be won by a margin that is less than the 40,000 votes margin in the last election.
 - iii. A sense of fellow feeling with, and encouragement from other countries such as Zimbabwe, Uganda, and Nigeria which are currently clamping down hard on GLBTs in their countries.
- c. The Ministry of Justice and Attorney-General's Department has taken a more sophisticated stance on GLBT issues. Their position is that there is a domain of human privacy that the law may not inquire into, and as long as GLBT practices remain there, the law would be disabled from disturbing them. Where the practices are overt, however, the law would have to intervene. With a current Minister of Justice and Attorney-General who is strong in his views and astute in the analyses of the law, and a tradition of passing all legislation through the Ministry of Justice and Attorney-General's Department, this may be the only containment on the President, Cabinet, and Parliament from enacting more explicit laws against GLBTs in the near future.
- d. The Constitution Review Commission (CRC) has very recently presented its final report to the President in December 2011. Implementation would likely commence almost immediately. The report would address the issue of GLBTs which received a significant number of submissions, judging from the matrices that were publicly available at the National Constitution Review Conference in March this year. Although the report is yet to be made public, it is predicted that the overwhelming public opposition for GLBTs in the submissions received by the CRC would weigh heavily on the conclusions of the Commission on the matter. On the other hand, the general principle of the Commission to encourage

national cohesion and consider the special interests of minorities may lead to the opening of more effective democratic spaces for advocacy for disadvantaged groups, including GLBTs.

- e. For much the same reasons as the President, the Parliament of Ghana has publicly noted its opposition to GLBTs and threatened to strengthen the laws against them, although there are some voices in Parliament that are completely opposed to such a move, and the possibility of generating more critical voices there exists. The recent swift passage of anti-GLBT laws in Nigeria and the anti-GLBT movements in other parts of Africa will continue to weigh heavily on Ghanaian legislators in the face of constant interactions between them in the context of the ECOWAS Parliament, the Pan-African Parliament, and other inter-parliamentary forums.
- f. The judiciary in Ghana, like most Ghanaians, is still pretty ultra conservative on GLBT issues, borne out of private cultural, religious, and other prejudices of individual judges. An attempt to test the legality of GLBT practices in the Supreme Court would likely turn in a vote of 12 to 2 against them at best.
- g. Whilst not condemning GLBTs outright, the CHRAJ has vacillated quite a bit on the issue, including a change in position from support to ambivalence by the new and current Commissioner. Understaffed in critical domains and underfunded, the CHRAJ seems to be saying that there are more priority areas in human rights for Ghana. Yet, ambivalence from the National Human Rights Commission on an issue that affects the rights of a significant subset of the population is almost a show of support to those who oppose GLBTs.
- h. The police do not only harass and intimidate GLBs, they are reluctant to act against persons who commit crimes against GLBs. Given their actions, it is clear that the institution does not recognise the rights of GLBTs, in fact, it consciously violates the rights of GLBTs and cannot be in support of them.
- i. The Ministry of Education, which superintends over half the population that is in School, and which has the highest budget of any Ministry, has recently issued a statement committing to eradicating GLBT practices in schools.

- j. The Ministry of Health has no official position on GLBT issues. However, to the extent that GLBs are discriminated against in health institutions, mainly due to an attitude of caregivers that they deserve to be ill, we can say that the Ministry is not supportive of GLBTs. Again, there is an absence of any official policy or action to target gays who are a particularly at risk subgroup of the population as far as HIV/AIDs is concerned. This also points to silent discrimination against GLBTs and an anti-GLBT attitude in the Ministry.
- k. CSOs have been relatively quiet on GLBT issues. Compared to the numbers and force with which CSOs address other national issues and participate in national debates, their engagement with this particular debate is minuscule. A few progressive academics, human rights activists, reproductive health specialists, all associated with CSOs, including very respected persons, have individually and openly supported the rights of GLBTs, amidst overwhelming castigation from virtually everyone, including some of their own.
- l. FBOs, basing themselves on the religious arguments noted above, form perhaps the most virulent opposition to GLBTs in Ghana. On the 13th of September 2011, the Christian Council of Ghana ended months of protest against the practice of homosexuality with a strongly worded message against the practice, courting Ghanaians not to vote for any politician who believes in the rights of homosexuals. The National Chief Imam has also mentioned that homosexuality is not acceptable in the Muslim faith.
- m. The media has generally followed and enlivened the debate and has not tried to set the agenda for the debate. Therefore, short of classifying them as part of the general public, it is difficult to assess how the media would react to GLBT issues as media, as contradistinguished from providing a channel for both sides of the divide to disseminate their views on it. The editors of some of Ghana's biggest newspapers have, however, been very critical of the GLBT movement.
- n. Using the cultural purity and cultural superiority arguments, Traditional Authority is dead set on eradicating GLBT practices from their communities. This is consistent with their traditional and constitutional role as custodians of the culture of the people of Ghana, a culture which, for now, is deeply averse to GLBT practices.

- o. All the major Development Partners (DPs), flowing from their country Constitutions, aid and development assistance charters, and cooperation agreements, subsume GLBT issues under human rights, which is a major consideration in their aid and assistance strategies. They would rather that Ghana recognised fully the rights of GLBTs, but are apprehensive of being viewed as too pushy, lest they are accused of cultural imperialism and interference in the internal matters of a state. For this reason, many donors are cautious about making the GLBT issue a trigger within the framework of the Multi-Donor Budget Support (MDBS).

5. STRENGTHS, WEAKNESSES, OPPORTUNITIES, AND THREATS (SWOT) FOR STAR-GHANA IN WORKING ON GLBT ISSUES:

Given the above findings, it is recommended for STAR-Ghana to critically note the following considerations:

- a. As an organisation which focuses on Gender Equity and Social Inclusion (GESI), STAR-Ghana's programming would be deficient if it ignores the concerns of GLBTs, a significant and growing sub-population in Ghana. STAR-Ghana must engage with GLBT issues in Ghana in the same way that it engages with the issues of other marginalised groups.
- b. All the arguments that are used to support the various and strong anti-GLBT positions are either heavily contested or grossly wrong. All the arguments are also based on very limited information on critical matters such as the demographics, practices, and constitutional and legal position on GLBTs in Ghana. Few Ghanaians know, for example, that heterosexual oral sex, involving the penetration of a natural penis into a mouth, and sex by a gay couple are treated equally by the law, and that to be fair, public disdain and police action based on the law, should be equally strong against such oral sex as it is against "gayism", or risk violating Article 17 of the Ghana Constitution. Similarly, few Ghanaians are aware that lesbianism is not a crime under Ghana law, for the simple reason that it does not involve penetration with a natural penis. A lot of clarification is needed to remove the cobwebs from the issues, steer the discussion of GLBT issues out of the domain of paucity of information and misinformation, and generally facilitate a more rigorous discussion of the issues. This is the only way to arrive at normative and policy conclusions whose scientificity is assured.
- c. STAR-Ghana would receive tremendous support from a small number of progressive academics, CSO operatives, and human rights activities and also from the DPs in its work on GLBT issues, even if the support from DPs is less overt than usual. STAR-Ghana must intentionally and strategically build on these opportunities.

- d. STAR-Ghana would receive overwhelming opposition and incur the hatred and scorn of the broad majority of Ghanaians, from the Presidency, through FBOs, to the common woman, in any programming it engages in relating to GLBTs. It is anticipated, for example, that Ghanaians may gather outside a radio station discussing pro-GLBT issues and wait for the panelists to get out and proceed to beat or even kill them. STAR-Ghana will also receive similar condemnation, even sabotage, from within segments of its own staff and partners, in pro-GLBT programming. These are pretty standard reaction to such engagements over the course of history, and should be expected.
- e. On this side of the elections, it is unlikely that any of the key drivers of change would risk the wrath of the electorate by supporting GLBTs, given the overwhelming condemnation of the practice by the people of Ghana. It would, therefore, be unwise to try any outreach programming aimed at improving the lot of GLBTs before January 2013.

6. RECOMMENDATIONS FOR STAR-GHANA:

Given the SWOT above, it is recommended to STAR-Ghana as follows:

1. STAR-Ghana should immediately ensure that *it maintains a broad and extensive definition of GESI in its programming*. Such a policy orientation would clearly capture the concerns of marginalised groups such as GLBTs. The proposed timeframe for this is January, 2012.
2. STAR-Ghana should support a process of *conceptualising, designing, and developing highly illustrative information and educational packages and activities* for the various drivers of change on GLBT issues. The proposed timeframe for this activity is January to June, 2012.
3. STAR-Ghana should hold a *carefully facilitated series of sessions with its operational staff and its CSO partners* on GLBT issues, as seen through GESI and the political-economy of change in Ghana. The initial results from developing the information and education material on GLBT issues could be used for this exercise. The proposed timeframe for this is May, 2012.
4. STAR-Ghana should support a process of *sophisticated engagements and interventions with the drivers of change* on GLBT issues in order to conserve and improve the rights of GLBTs in Ghana, and in particular, to ensure that they are not discriminated against as equal members of the body politic. The proposed timeframe for this activity is from January 2013.

INTRODUCTION

STRUCTURE OF THE REPORT

This report is a Scoping Study on Gay, Lesbian, Bisexual and Transgender (GLBT) issues in Ghana. The study seeks to:

1. Describe the demographics and practises of GLBTs in Ghana;
2. Clarify the constitutional and legal position in Ghana relating to persons with different sexual orientations, including GLBTs;
3. Assess the official and unofficial positions of the Drivers of Change in Ghana on GLBT issues; and
4. Provide an inventory of options that STAR-Ghana may employ to enhance the rights of persons with different sexual orientations in Ghana, whilst noting the strengths, weaknesses, opportunities, and threats of the options.

The report is in six parts: this introduction; the methodology used for the study; the findings made; the recommendations for the consideration of STAR-Ghana, together with SWOT analyses of the recommendations; a bibliography, and an appendix.

BACKGROUND TO THE CONSULTANCY ASSIGNMENT

STAR-Ghana is a multi-donor pooled funding mechanism. It is currently funded by the Danish International Development Agency (DANIDA), the European Union Delegation in Ghana (EU) and the British Department for International Development (DFID).

It has as its overall goal “to increase the accountability and responsiveness of government, traditional authorities, and private enterprises to Ghanaian citizens”. The purpose of this goal is to “increase the influence of civil society organizations and Parliament in the governance of public goods and service delivery.”

In achieving this objective, STAR-Ghana has adopted several strategies, one of which is the GESI. This strategy is a framework developed by STAR-Ghana to promote inclusive and pro-poor development projects in the country. It focuses on gender, disability and geographical exclusion. However, within the GESI framework is the understanding that there are other forms of exclusion in Ghanaian society which the framework is capable of addressing.

In October 2011, STAR-Ghana commissioned this Scoping Study of GLBT issues in Ghana. This was due to an initial assessment that GLBTs in Ghana may be the subject of exclusion and so the scope of GESI could include them. The consultant was specifically tasked to advise STAR-Ghana on what options were open to it, given its goal, strategies, and programming.

THE SCOPE OF THE STUDY

The study covered the following:

1. An examination of the history of GLBT practices and issues in the world, particularly in Africa and in Ghana;
2. An examination of the demographics and ethnography of GLBTs in Ghana, to include:
 - a. Their population in Ghana,
 - b. Their concentrations in Ghana,
 - c. Their activities, and
 - d. Their networks and associations;
3. An analysis of the constitutional and legal context of GLBT issues in Ghana;
4. An assessment of the key arguments in support of and in opposition to GLBTs and the motivations of those arguments;
5. A political economy mapping of the drivers of change as it relates to GLBT issues;
6. An exploration of the interface between GLBTs and the police, labour, health, education, and prisons sectors; and
7. An assessment of the options open to STAR-Ghana for working on GLBT issues.

METHODOLOGY

In carrying out this study, a mix of methods was adopted. These are:

1. Desk Reviews, Library and Internet research, and Field Interviews (using a semi-structured interview guide) to:
 - a. Analyse STAR-Ghana's Vision, Mission, Strategic Objectives, Programmes and Projects, in order to determine the scope of STAR-Ghana's activities and its various strategies;
 - b. Assess the demographics, ethnography and practices of GLBT persons in Ghana;
 - c. Clarify the constitutional and legal position in Ghana relating to GLBT issues; and
 - d. Identify the drivers of change in Ghana and assess their official and unofficial positions on GLBT issues.

2. Informal interviews and interactions with key members of the Gays and Lesbians Association of Ghana (GALAG) and with GLBs.
3. Designing an inventory of options that STAR-Ghana may choose from in working on GLBT issues, subjecting each option to a SWOT analysis, and arriving at a set of recommendations that are feasible and doable.

The main limitation on the methodology employed was that the intense homophobia in Ghana at the time of the study had driven GLBTs further underground, and this made it initially difficult to gain the trust of the GLBs during interviews. All GLB interviewees spoke on condition of anonymity.

FINDINGS

DEMOGRAPHY AND ETHNOGRAPHY OF GLBTs IN GHANA

EXISTENCE OF GLBTs IN GHANA: THEN AND NOW

Same-sex marriages and sexual relationships have always existed and still exist in Africa and in Ghana. Although there is evidence of same-sex marriages in Ghana and in many other African countries, the incidents of such marriages do not usually involve sexual activity of the partners. Among some ethnic groups in Ghana, woman to woman marriages, mainly by women who are unable to bear children, exist. The purpose of such marriages is for such women to have children of their own, their "wives" being allowed to get pregnant by particular or any men, and to bear children who become the children of the barren women.

There is also evidence that same-sex sexual relationships have always existed in African societies. Anthropologists writing about the Akan in Ghana and in La Cote D'Ivoire in the twentieth century recorded the use of male slaves as concubines, who were treated like female lovers.¹ There are also some historical accounts of people who have either been ostracised or punished in other ways for

¹ Murray, S and Roscoe, W (Eds.) (1998), *Boy wives and females Husbands: strides of Africa Homosexuality*. New York: St. Martin Press.

engaging in sexual relations with persons of the same sex.² Homosexuality, at least some forms of it, has thus, traditionally been repressed in Africa and in Ghana as a form of sexual expression. The further evidence is that it is severely punished when it is found out and the "culprits" are reviled.

There is no indication that there are transgendered persons in Ghana who have undergone medical procedures for the purpose, although the practice of persons of one gender dressing and carrying themselves around as if they were of the opposite gender is widespread in the Gay and Lesbian community in Ghana. Indeed, there is vocabulary in Ghanaian languages for persons of the latter category.³

Sexual activity in general is hardly discussed in most African societies, including Ghana, and sexual expression is firmly kept under wraps. Thus, discussing sex, kissing, fondling, sexual intercourse, and other forms of sexual expression in public are severely punished. The repression of homosexuality and homophobia are very likely a logical extension of a general averseness of African society for any form of publicity of anything sexual. This theory is yet to be fully examined in the Ghanaian context, however, the linkage between the disdain for public heterosexuality and homophobia when homosexuality is publicised is patent indeed. Indeed, homophobia only came to the fore in this country when there was a proposed conference of gays and lesbians in 2006.

Against this background, it is difficult to fully decipher the demographics and the ethnography of GLBTs in Ghana. What follows is a bold attempt to do this, using evidence from media reports and from the few studies that exist on GLBTs in Ghana.

NUMBERS OF GLBTs IN GHANA

It is safe to conclude that there is a growing number of Gays, Lesbians, and Bisexuals (GLBs) in Ghana. Conservative estimates put the number of persons in Ghana who have been or are involved in same-sex relationships at some 10% of the population⁴ or approximately 2.5 million people.⁵

² This has been affirmed by respondents to our questionnaires, a copy of the responses is on file.

³ Such persons are referred to as "*kwadwobasia*", an unflattering term.

⁴ <http://www.asylumlaw.org/docs/sexualminorities/Ghana060915InternationalGayandLesbianHumanRightsCommissionHumanRightsForEveryoneEverywhere.pdf>, last accessed on 6th February, 2012

During the past year, 2,000 active homosexuals have been identified in Accra and Tema alone,⁶ and some 8,000 of them were recently registered by just one NGO in the Western Region and in some parts of the Central Region. The number included students in junior and senior high schools (JHS/SHS) and in the polytechnics. The number is up from 2,900 lesbians and gays registered in the two regions in 2008.⁷ Clearly, GLBTs are either growing in number or are becoming bolder and able to register as such.

Gayghana.com, a website for Ghanaian homosexuals, claims that there are about 200,000 gays in Ghana, however, only 40,000 of them have registered at the website.⁸ It was reported that some hundreds of GLBs attended a gay wedding in Kumasi during Easter of this year.⁹

All these figures must be viewed in the face of growing homophobia that is sending the practice underground. In the words of a particular website, "Homosexuality is on the increase in Ghana despite police brutality against homosexuals who are arrested and brought to the police stations."¹⁰

The general conclusion is that the numbers are far greater than these estimates, and the projection is that they will continue to increase. Thus, it is very important that every policy maker takes issues affecting GLBTs into account considering that about 10% of the population have engaged or are engaged in some form of homosexual activity.

⁵These numbers include persons who have at one time or the other been involved in homosexual practices. They include students in second cycle boarding educational institutions, inmates in correctional facilities and persons who are actual homosexuals.

⁶Ibid.

⁷<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=209214>, last accessed on 6th February, 2012

⁸<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=200705>, last accessed on 6th February, 2012

⁹<http://ilga.org/ilga/en/article/mXOSKasIke>, last accessed on 7th March, 2012

¹⁰<http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=200705>, last accessed on 7th March, 2012

CONCENTRATION OF GLBTs IN GHANA

REGIONAL DISTRIBUTION

There appears to be a heavy concentration of GLBs in four of the five largest cities in Ghana: Accra, Kumasi, Tema-Ashiaman, and Sekondi-Takoradi, with evidence of GLB clubs, private events, public events, and even marriage celebrations. Again, the evidence is that the social bonding of GLBs is likely to grow stronger, especially in the face of public attacks on them.

EDUCATIONAL INSTITUTIONS

Second cycle boarding educational institutions, especially single-sex schools, experience a disproportionate amount of GLB activity.¹¹ It is the inclusion of these figures that brings the estimate of persons who have been, or are currently involved in homosexuality to at least 10% of the population.

This is not surprising as most people tend to experience their first “adult” erotic feelings, experiment with sexual behaviours, and develop a strong sense of their own gender identity and sexual orientation during their adolescence. The reports in the media on homosexuality indicate that since most young people are unsure about their sexual orientation, they tend to experiment in their adolescence and whilst in school.

In most of the educational institutions in the country, some students in exploring their sexuality make the decision to be homosexual. This decision is not necessarily founded on a belief that they are born homosexual, and is often due to the fact that they only have access to persons of the same sex.

Homosexual activities are more rampant amongst students in girls’ boarding schools. Girls who want to explore their sexuality, but are either afraid of getting pregnant or have no access to male partners, given the strict rules regarding male visits to girls’ schools, resort to homosexual activities. The practices usually involve non-elaborate forms of sexual expression and gratification. For a good number

¹¹ See generally, <http://www.modernghana.com/news/374548/1/school-father-and-school-mother-a-cause-of-homosex.html>, last accessed on 6th February, 2012; <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=210648>, last accessed on 6th February, 2012;

of students, on leaving boarding school, they never engage in homosexual activities again. Some do, and are constrained by homophobia in Ghana to become bisexual.

CORRECTIONAL INSTITUTIONS

Correctional facilities in Ghana experience a lot of homosexual activity amongst inmates. The Ghana Prisons Service has admitted that sodomy occurs in Ghana's prisons and blames it on overcrowded prison conditions which are so bad that prisoners have to sleep in shifts. The practice is so widespread that some inmates of the same gender openly identify themselves as man and wife. When this happens, the prison authorities ensure that they are separated into different cells.¹²

COMMERCIAL HOMOSEXUALITY

Trade in homosexual services is rife in Ghana. The distribution of the clientele is 63% local and 37% foreign.¹³ The foreign clientele are mostly Caucasian. The broad majority of male clients are either Ghanaian or black.¹⁴ At recreational places like Chester's Place and at the La Pleasure and Coco Beaches, male prostitutes discreetly offer their services to willing customers. They perform various sexual services for a fee, though they may not be gay themselves. Enterprising young men, temporarily pushing aside their own heterosexuality, see an opportunity to make quick money.¹⁵ Approximately 50% of Ghanaian men who admitted to have been in homosexual relationships have gay sex "for economic reasons". However, only about 1% regarded themselves as commercial sex workers, according to one study.¹⁶

GLBT PRACTICES

Flowing from the above, most gays and lesbians in Ghana are bisexual. Some initial studies reveal that about 50% of Ghanaian men who have sex with other men also have sex with women, creating a potential 'crossover' between the gay and heterosexual

¹² www.ghanaweb.com/ghanahomepage/newsarchive/artikel.php, last accessed on 7th February, 2012

¹³ <http://journalism.berkeley.edu/projects/mm/luckie/gayforpay.html>, last accessed on 7th February, 2012

¹⁴ www.freewebs.com/african-rapport/MSMReport3%5B1%5D.doc, last accessed on 7th February, 2012

¹⁵ Ibid. footnote 9

¹⁶ <http://journalism.berkeley.edu/projects/mm/luckie/gayforpay.html>, last accessed on 7th February, 2012

populations. Almost all the 8000 gays and lesbians registered in the Western and Central Regions are bisexual.¹⁷ Being bisexual offers some form of protection for such persons. It allows them to conform to the socially accepted sexual role, getting married to the opposite sex, and at the same time indulging in their inherent or assumed sexual inclination. The number of lesbians is also said to be much fewer than gays in the country, whilst transgenders are almost non-existent. The Gully Magazine, an online magazine in Ghana that caters to the needs of homosexuals, reports on a survey of gay respondents in March 2004 which indicates that 54% of gay respondents described themselves as exclusively gay, whilst 46% said they were bisexual.¹⁸ According to the said survey, the “[f]emale sexual partners of the bisexual men include; wives (10.7%), girlfriends (31.3%), casual sex partners (16.1%) and commercial sex workers (1.3%).”¹⁹
training

SOCIAL ORGANISATION

In Accra, there are a few gay and gay-friendly bars. The gay scene in Accra is considerably less noticeable than in some western countries. In Ghana's other large cities, such as Kumasi, Tema-Ashiaman, and Sekondi-Takoradi, gay social life exists less conspicuously than in Accra. Very little, if any, research on homosexuality has been conducted in the rural areas of Ghana, and the assumption is that the social organisation of GLBTs there is non-existent, drowned by homophobia and stiff penalties for homosexuals.

There is also the GALAG, an NGO which promotes the interests of GLBs in Ghana and "seek the sexual wellbeing of same gender loving people, their families and friends as well as the general population at large". Although GALAG has been refused registration by the Registrar-General of companies, they nevertheless carry on their activities: peer education on safer sexual practices; access to user-friendly health and social services; and the general promotion of their wellbeing.

¹⁷<http://changingattitude.org.uk/archives/3611>, last accessed on 7th February, 2012

¹⁸http://www.thegully.com/essays/gaymundo/0403_gay-men_hiv_ghana/msm_ghana_findings6.html, last accessed on 7th February, 2012

¹⁹ Ibid.

DISCRIMINATION AGAINST GLBTs

There is evidence that GLBs are discriminated against in Ghana. Survey results show that 50% of GLB respondents faced stigmatization, rejection and denial. Some are dismissed from work when they are "found out" or when they "come out". There are also reports of harassment and brutality against GLBs. Male homosexuality is especially frowned upon, and reports of police brutality against homosexual males have been raised by UNHCR. Openly gay men in Ghana encounter discrimination, blackmail, imprisonment and torture. The Gully Magazine has recounted a number of incidents of abuse against some persons because they are gays.²⁰ Unfortunately, the victims of such abuses cannot rely on the law enforcement agencies for protection or any remedy.²¹ A Regional Minister recently ordered the arrest of all homosexuals in his region, tasking the Bureau of National Investigations and all security agencies to smoke out persons suspected to be engaging in same-sex relationships. What is worse, there is a clear reluctance by police officers to prosecute persons who inflict violence against homosexuals.²² The response to a recent gang attack against alleged homosexuals illustrates this reluctance. The victims of the attack approached two police stations in Accra, the Jamestown Police Station and the Striking Force Unit, before their case was taken up by the Railways Police Station.²³

Discrimination on the basis of a person's sexual orientation also exists in the health sector. The general attitude is that homosexuals who are ill deserve to be ill because they are engaged in a practice that leads to illnesses. This affects the quality of care they receive from health institutions. The National HIV/AIDS Policy does not identify gays as a "key population at higher risk". There are hardly any advertisements or public health education programmes specifically directed at GLBT's. Given that most gays are also bisexual, dealing comprehensively with HIV/AIDS issues, particularly its transmission in the general population, must prioritise gays as a

²⁰ http://www.thegully.com/essays/gaymundo/030827_gay_ghana.html; and http://www.thegully.com/essays/gaymundo/040623_gay_life_ghana.html, last accessed on 6th February, 2012

²¹ http://www.thegully.com/essays/gaymundo/040623_gay_life_ghana.html, last accessed on 6th February, 2012

²² Ibid.

²³ <http://www.etv.com>

subgroup of the population that needs special attention. This is not happening because of discriminatory attitudes to anything homosexual.

It is difficult to provide accurate information of stigmatisation and discrimination of GLBT's in the working environment. In an interview with the CEO of CEPEHRG (Centre for Popular Education and Human Rights) and a former president of GALAG, he disclosed that the necessary documentation for the registration of GALAG is ready, but they were refused registration as an NGO by the Registrar of Companies. This is because the Registrar believes that their activities are illegal under Ghana law.

These negative reactions against GLBTs are evoked once a GLBT “comes out of the closet”. To shelter themselves from the effects of homophobia, GLBTs must keep their sexual orientation a secret (remain in the closet).

THE LAW ON GLBTs IN GHANA

THE CRIMINAL LAW

Most of the countries in the world that still criminalize homosexual conduct are former British colonies. British abhorrence of homosexuality is traceable to the Common Law, even before the enactment of what is probably the first British criminal anti-sodomy law in 1533.²⁴ The Act was repealed in 1553 and reinstated in 1558 as a capital offence. However, under the Offences against the Person Act of 1861, the crime was punishable by penal servitude of between 10 years and life imprisonment. These laws were transplanted in British colonies such as Ghana. In contrast, there were no anti-sodomy laws in French colonies in Africa. This is because, even though sodomy was a serious crime before the French Revolution, the Napoleonic Penal Code of 1791 made no mention of private same-sex relations. Thus, those laws did not make their way to the French Colonies.

And so, section 104 of Ghana's Criminal Offences Act, 1960 (Act 29) prohibits any person from having unnatural carnal knowledge of another person who is 16 years or above, with or without the person's consent. The section also prohibits sexual intercourse of a

²⁴ Under the Buggery Act of 1533, whose long title read: “An Act for the punishment of the vice of Buggerie (25 Hen. 8 c. 6)”, a person convicted of buggery “shall suffer such pains of death and losses and penalties of their good chattels, debts lands tenements, and hereditaments as felons do according to the Common Laws of this Realm ...”

human with an animal. Even though the term “unnatural carnal knowledge” and its various conjugated forms are used 19 times under Chapter Six²⁵ of Act 29 and 21 times in the entire Act, the Act provides no materially helpful definition for the term. It says that “unnatural carnal knowledge” is “sexual intercourse with a person in an unnatural manner or with an animal”.²⁶ Whilst the meaning of sexual intercourse with an animal cannot be a subject of reasonable debate, the dispute over what constitutes sexual intercourse in “an unnatural manner” in Ghana is yet to be resolved. This leaves the meaning of the term to be derived from other common law jurisdictions where similar laws exist.

The cognate term used in Nigeria²⁷, Uganda²⁸, Kenya²⁹ and India,³⁰ “against the order of nature”, is only a little more helpful. Under the laws of those countries, the term is explained to mean sexual “intercourse against the order of nature”. Even though what constitutes “the order of nature” is in itself not specifically outlined and therefore not beyond debate, the generally-accepted position is that sexual intercourse is against the order of nature if the approach employed excludes procreation outright³¹.

With the above explanation, sexual intercourse is unnatural if a male intentionally has sex with an animal or if a female intentionally allows an animal to have sex with her (bestiality). Also, it is against the order of nature for a male to intentionally penetrate the anus

²⁵ Chapter Six of the Criminal and Other Offences Act, 1960 (Act 29), deals with sexual offences.

²⁶ Compare the Ghanaian law with that of Texas. The Texas Penal Code Ann. §21.06 (a) (2003) provides: “A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex”. The statute defines “[d]eviate sexual intercourse” as “(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or (B) the penetration of the genitals or the anus of another person with an object.”

²⁷ Section 214 of the Criminal Code Act, 1990, of Nigeria states: “Any person who - (1) has carnal knowledge of any person against the order of nature; or (2) has carnal knowledge of an animal; or (3) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for fourteen years.”

²⁸ See section 145 of the Penal Code Act of Uganda, (Chapter 120) 1950.

²⁹ Section 162 of the Penal Code of Kenya (Chapter 63) (Revised 2009).

³⁰ Section 377 of the Indian Penal Code (1860) states that: “Unnatural offences.--Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten year, and shall also be liable to fine.”

³¹ In *Lawrence v. Texas* (above), it was stated that “... early American sodomy laws were ... to prohibit nonprocreative sexual activity more generally...”

(sodomy) or mouth (felatio)³² of a male or of a female with his penis. Consequently, the only mode of sexual intercourse which does not offend “the order of nature” is sex *per vaginam*, namely, sexual intercourse through the vagina by penile penetration.

However, as outlined from the onset, homosexuality does not necessarily involve buggery/sodomy or unnatural carnal knowledge. This implies that a gay person who does not engage in buggery or unnatural carnal knowledge would not be caught by section 104(1) (b) of Act 29. Further, a heterosexual person who engages in the acts prohibited under the said section commits an offence. As noted earlier, in all the above instances, consent of the parties is of no consequence; so that a person cannot escape culpability by saying that the said acts were done with the consent of the parties involved.

The Criminal Offences Act further provides that "penetration" is an essential element in proving carnal knowledge, whether natural or unnatural.³³ By this, sexual intercourse cannot be established in law where penetration is wanting. It has accordingly been held that no lesser act of sexual gratification such as, “brush work”³⁴ or mutual masturbation would suffice to establish carnal knowledge. It follows that lesbianism would ordinarily not meet the "penetration" test established under section 99 of the Criminal Offences Act for the simple reason that lesbians do not possess a natural penis.³⁵ This position is further supported by the historical account of the law on unnatural offences as narrated by the US Supreme Court in *Lawrence v Texas*.³⁶ By this, the general understanding of the prohibition seems to exclude sexual activities between two or more women; and it is inconsequential whether the women engage the use of sex toys.³⁷

³² In the Indian case of *Khanu v. Emperor*, AIR 1925 Sind 286, the court held that coitus per mouth is penetration within the intendment of section 377 of the Indian Penal Code and hence is unnatural carnal knowledge.

³³ Section 99 of Act 29 provides that: “Whenever, upon the trial of any person for an offence punishable under this Code, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration.”

³⁴ See Dotse JSC in *Gligah & Atiso v. The Republic* [2010] SCGLR 870 @ 879, where the learned Justice of the Supreme Court said: "So long as there was some penetration beyond what is known as brush work, penetration would be deemed to have occurred and carnal knowledge taken to have been completed."

³⁵ *R v Jacobs* (1817) Russ & Ry 331 supports the position that buggery relates only to intercourse *per anum* by a man with a man or woman, or intercourse *per anum* or *per vaginam* by either a man or a woman with an animal.

³⁶ 519 US 558 (2003).

³⁷ See generally: Smith & Hogan, (2009). *Criminal Law: Cases and Materials* (10th edition.) Oxford University Printing Press, United Kingdom.

The laws of Ghana do not directly or indirectly address the issue of sex-change or trans-sexualism. It is, therefore, arguable that a biological male who transforms his sex to a female may have sexual intercourse with a male without violating “the order of nature”. This is because the mode of sexual intercourse between the two would involve penile penetration *per vaginam*; which intercourse may not be unnatural. It may be counter argued that “the biological sexual construction of an individual is fixed at birth”, so that to determine sex, the chromosomal, gonadal and genital tests must be congruent on one sex.³⁸ Accepting this argument would mean that such a male who transforms into a female and has sexual intercourse with another male may be committing an offence, as long as there is natural penal penetration in the course of it.

In the case of bisexuals, only those aspects of their sexual orientation that are categorised as "unnatural carnal knowledge" are potentially caught by the law. Their other sexual activities are completely legal.

The laws of Ghana have no express position on the sexual activities of hermaphrodites. It, however, seems that a hermaphrodite can identify with only one of the sexes, which sex is usually the one he/she is identified with at birth or the sex that has chromosomal, gonadal and genital congruence. On this basis, it is suggested that a hermaphrodite who is identified at birth as a male, or who is biologically categorised as male, would violate “the order of nature” if he engages in sexual intercourse with another male or if he engages in sexual activity, not *per vaginam*, with a woman.

Flowing from the above analysis:

1. *Felatio*, the sexual stimulation of a man’s genitals using the tongue and lips is a criminal act under the laws of Ghana.
2. Sodomy or buggery is a criminal act under the laws of Ghana.
3. Bestiality is a criminal act under the laws of Ghana.
4. Gay practice is a criminal act under the laws of Ghana, only if it involves unnatural carnal knowledge.
5. Lesbianism is not a criminal act under the laws of Ghana.
6. A transsexual commits a crime in Ghana if his/her sexual activity involves unnatural carnal knowledge.

³⁸ Corbette v. Corbette [1971] P 83.

7. A bi-sexual commits a crime in Ghana if his/her sexual activity involves unnatural carnal knowledge.
8. A hermaphrodite commits a crime in Ghana if his/her sexual activity involves unnatural carnal knowledge.

PUNISHMENT

The Criminal law of Ghana draws a clear distinction between consensual and non-consensual unnatural sexual intercourse. Consensual sexual intercourse which violates the order of nature is a misdemeanour whilst non-consensual sexual intercourse which violates the order of nature constitutes a first degree felony.³⁹ Usually, the punishment for a misdemeanour is less harsh. Where a punishment for a particular misdemeanour is not expressly prescribed by law, the misdemeanour may attract a simple fine or a sentence not exceeding a term of three years imprisonment⁴⁰. The punishment for unnatural carnal knowledge, where the persons involved have consented to the act, is not expressly prescribed. Thus, a person convicted for having consensual unnatural sexual intercourse cannot be sentenced to a term of imprisonment that exceeds three years; and a court may exercise its discretion to direct the sentence to be with hard labour⁴¹. However, where a person is repeatedly found guilty of having consensual unnatural sexual intercourse, he may, at the discretion of the court, serve a maximum term of five years in prison.⁴² Also, the court may exercise its discretion to add a fine to the sentence or substitute the term of imprisonment with a fine.

In relation to a situation where a person has unnatural carnal knowledge of a person, and the consent of the other party⁴³ is not obtained, the offence is treated as a first degree felony and the offender is liable to a term of imprisonment ranging from five to twenty-five years. This severe punishment underscores the distinction the law seeks to make between consensual and non-consensual unnatural carnal knowledge. The point to note here is that the punishment for committing “unnatural carnal knowledge” does not extend beyond that which is outlined above.

³⁹ See section 104 of Act 29.

⁴⁰ See section 296(4) of the Criminal Procedure Act, 1960 (Act 30).

⁴¹ See section 296(6) of Act 30.

⁴² See Section 300 of Act 30.

⁴³ The person should be above 16 years. This is because where a person is below 16 years, (s)he is legally incapable of giving consent, and an offence involving such a person is categorized as defilement. See Section 101(2) of the Criminal Offences Act, 1960 (Act 29).

A punishment other than that which is prescribed for an offence is known as “unusual punishment”⁴⁴. Thus, any authority or person who metes out such unusual punishment to a convict may be acting illegally. Therefore, a person convicted of the offence of unnatural carnal knowledge is subject only to the punishment which is outlined above. Such a person is not subject to any additional punishment or civil sanction, such as denial of pension benefits, or dismissal from work, unless dismissal is by law, a previously specified consequence of the conviction.⁴⁵ For example, it is not directly provided for that a conviction for the offence of unnatural carnal knowledge is a ground for dismissal from the Ghana Armed Forces.⁴⁶ However, a person convicted for having unnatural carnal knowledge may be dismissed on the general ground that he has committed a crime which properly falls under the category of crimes that is punishable by dismissal from the Armed Forces.

GLBTs, MARRIAGE, AND ADOPTION OF CHILDREN

As previously noted, some Customary Laws on marriage in Ghana were more progressive, and allowed for same-sex marriages, even if for the limited purpose of ensuring that barren women were able to use their "wives" as surrogate mothers. And in the ethnic groups in Ghana that recognise same-sex marriages, adoption of children by such couples was permitted. The marriage laws that were transplanted in Ghana from Britain in the nineteenth century are ultra conservative and have hardly changed. It follows that only a marriage between a natural born man and a natural born woman would be considered valid in Ghana. This notwithstanding, there is evidence that gay and lesbian couples live in Ghana, and at least one gay public wedding has been recorded. Also, the government of Ghana grants diplomatic privileges to the partners of gay and lesbian foreign diplomats. It is also possible that same-sex marriages at customary law are valid under the constitutional protections accorded custom in the 1992 Constitution of Ghana.

Given the generally conservative imported laws that govern family life in Ghana, and their protection by a powerful religious lobby, gay and lesbian couples may not adopt children under the adoption laws. The criteria set out in those laws, and the administrative

⁴⁴ England’s declaration against "cruel and unusual punishments" was approved by Parliament in February 1689. This declaration thus becomes part of Ghana’s law by the virtue of the Judicature Act of 1876 as a statute of general application. Also see the Eighth Amendment to the Constitution of the United States of America.

⁴⁵ See section 1(1) of the Punishment of Habitual Criminal Act, 1963 (Act 192).

⁴⁶ Armed Forces Act, 1962 (Act 105).

practices of the Social Welfare Department which must submit a social inquiry report on the desirability of every proposed adoption, would most certainly not allow that to happen.⁴⁷

THE CONSTITUTION OF GHANA AND GLBTs

The 1992 Constitution is the supreme law of the Republic of Ghana and any other law, including the Criminal Laws, the Marriage Laws, and Customary Law, found to be inconsistent with any provision of the Constitution is to the extent of the inconsistency void.⁴⁸ What follows is an analysis of the state of the law on GLBTs vis-à-vis the human rights provisions of that Constitution.

The antidiscrimination clause of Ghana's Constitution (Article 17) does not expressly include sexual orientation as a ground for discrimination. However, given the open-ended character of antidiscrimination laws, sexual orientation may be read into it. The challenge is that the current Supreme Court is unlikely to interpret Article 17 expansively in relation to GLBT issues, due mainly to religious and cultural beliefs of individual justices. Testing GLBT rights in the Supreme Court today would produce at best a 2-12 vote against such rights as rights in themselves. Indeed, the evidence is that, a retired Supreme Court judge, who was perhaps the most progressive on human rights issues when he was in that court, is about to file a suit in the Supreme Court as plaintiff and seeking a declaration that GLBT practices are unconstitutional in Ghana. The Supreme Court is, however, likely to hold almost unanimously that GLBTs possess all the other panoply of rights that all Ghanaians possess.

Further, Article 33(5) of Ghana's Constitution provides an opportunity for persons interested in guaranteeing the right to sexual expression and orientation for GLBTs.⁴⁹ The article allows the courts of Ghana to enlarge constitutional rights, provided that such new additions are “*inherent in a democracy and intended to secure the freedom and dignity of man*”. The implication of this provision is that GLBTs' right to sexual orientation may be allowed in Ghana if they are deemed by the courts to be inherent in a democracy and intended to secure the freedom and dignity of man. Taking into consideration that GLBTs' right to sexual orientation is contested the

⁴⁷ See generally Part 4 of the Children's Act, 1998 (Act 560); the Adoption Rules, 2003 (C.I 42); and the Child Rights Regulations, 2002 (L.I. 1705).

⁴⁸ See Article 1(2) of the 1992 Constitution of Ghana.

⁴⁹ This article states that “The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”

world over, it may not meet the democracy test of the Constitution of Ghana. It follows that any legal action to improve the lot of GLBTs is more likely to succeed under the antidiscrimination clause than under Article 33.

GLBTS AND THE DRIVERS OF CHANGE IN GHANA

In Ghana, change happens through the agency of the "drivers of change". Who are the drivers of change in Ghana and what do they think about GLBT issues?

The drivers of change in Ghana with regard to GLBT issues are the following: the Presidency and the Cabinet; Parliament; the Judiciary; the Ministry of Justice and Attorney-General's Department; the Constitution Review Commission; the Ministry of Education; the Ministry of Health; the CHRAJ; the Police; FBOs; Human Rights NGOs and CSOs (particularly, GALAG and CEPEHRG); Development Partners; and the People of Ghana.

THE PEOPLE OF GHANA

No form of change can come about without this driver. In the final analysis, GLBTs have to live among other people and relate or interact with them. If all other things are changed except the people themselves, the purpose of change will be defeated. In addition, if any change such as amending the Constitution in any significant way is needed, it cannot be done without this driver, since it is the people that have to vote in the referendum. The importance of this driver cannot be overemphasised.

From the general reactions to GLBT issues in the country lately, it is evident that the general public is overwhelmingly against the practice of homosexuality. Their homophobia is founded on the following arguments:

- i. The religious argument which says that the Bible and the Qur'an and generally God's law forbids the practice and so it should not be condoned in Ghana. This argument is often extended to say that marriage is ordained by God as between one man and one woman, and that a family is to be only so constituted, plus children. Some variants of this argument stress that the primary purpose of sexual activity is procreation, and so it should not take place in circumstances where procreation is biologically impossible.
- ii. The cultural purity argument which states that GLBTs are a few undesirable warts on the cultural purity of Ghana and need to be excised. According to several gay community leaders, most Ghanaians are unaware that homosexuality has always existed in Africa and is growing steadily. They consider the practice "un-African" or a "white man's practice" that was

brought to Ghana either by the 'white man', or by Ghanaians who have lived outside the country and introduced it to Ghana upon their return. Many Ghanaians argue that the current practice of "coming out" is driven by foreign forces. Many gay men and women adamantly refute these theories.

- iii. The cultural imperialism argument which states that GLBTs are a foreign importation that is reminiscent of colonial and neo-colonial cultural domination, and need to be resisted in the same matter and with even greater force.
- iv. The legal argument which states that GLBT practices are illegal in Ghana, and so those engaging in them need to be punished and put away.
- v. The health argument which says that GLBT practices have deleterious health effects, including HIV/AIDs, other sexually transmitted diseases, anal cancer and rectal bleeding.
- vi. The bestiality and human superiority argument which says that humans are superior to other animals and should not engage in practices that are akin to what beasts do. Some argue that even beasts are not homosexual, and so humans should not be.
- vii. The human rights relativism argument, which says that human rights are relative to cultures and seasons, and so each culture and season, should decide which human rights to promote, and in any event, which human rights to promote in the light of other competing and compelling human rights and in the face of limited resources. Such an analysis would immediately, in their view, exclude the rights of GLBTs.

It can be surmised, however, that with respect to such issues as the rights of GLBTs to access employment and exercise other related rights, the general public is not against such rights, but would generally be uncomfortable working or relating with a person who openly indulges in homosexual practices.

THE PRESIDENCY AND THE CABINET

The President of Ghana has himself categorically stated that he will not support any attempt to legalise homosexuality (and other related acts) in the country. A deep assessment of this position shows that it is influenced by at least three factors:

- i. A desire by a President, who is constantly described as weak, to assert his authority against what is regarded as cultural imperialism with the declaration by David Cameron that the UK may halt aid to countries, including Ghana, which violates the human rights of GLBTs.
- ii. A need to stay strategic one year to Presidential and Parliamentary elections in the light of overwhelming public anger and opposition to GLBTs, especially as the elections are projected to be won by a margin that is less than the 40,000 votes margin in the last election.

- iii. A sense of fellow feeling with, and encouragement from other countries such as Zimbabwe, Uganda, and Nigeria which are currently clamping down hard on GLBTs in their countries.

Speaking on behalf of the Government, the Deputy Minister for Information has also stated that the government would maintain Ghana's law on homosexuality and would not take any cue from other countries in reforming the law to embrace the 'unacceptable act'. It is obvious that the position of the Presidency and by extension the Cabinet is that acts of homosexuality are not legal and should not be legalised in Ghana.

THE MINISTRY OF JUSTICE AND ATTORNEY GENERAL'S DEPARTMENT

The Ministry of Justice has taken a more sophisticated stand on GLBT issues. Their position is that there is a domain of human privacy that the law may not inquire into, and as long as GLBT practices remain there, the law would be disabled from disturbing them. Where the practices are overt, however, the law would have to intervene. With a current Minister of Justice and Attorney-General who is strong in his views and astute in the analyses of the law, and a tradition of passing all legislation through the Ministry of Justice and Attorney-General's Department, this may be the only containment on Cabinet and Parliament from enacting more explicit laws against GLBTs in the near future.

CONSTITUTION REVIEW COMMISSION

The Constitution Review Commission (CRC) has very recently presented its final report to the President in December 2011. Implementation would likely commence almost immediately. The report would address the issue of GLBTs which received a significant number of submissions, judging from the matrices that were publicly available at the National Constitution Review Conference in March this year. Although the report is yet to be made public, it is predicted that the overwhelming public opposition for GLBTs in the submissions received by the CRC would weigh heavily on the conclusions of the Commission on the matter. On the other hand, the general principle of the Commission to encourage national cohesion and consider the special interests of minorities may lead to the opening of more effective democratic spaces for advocacy for disadvantaged groups, including GLBTs.

PARLIAMENT OF GHANA

For much the same reasons as the President, the Parliament of Ghana has publicly noted its opposition to GLBTs and threatened to strengthen the laws against them, although there are some voices in Parliament that are completely opposed to such a move, and the

possibility of generating more critical voices there exists. A number of senior and outspoken anti-GLBT elements in the Parliament are, however, prevailing on a number of younger Members of Parliament to change their pro-GLBT rights positions. The recent swift passage of anti-GLBT laws in Nigeria and the anti-GLBT movements in other parts of Africa will continue to weigh heavily on Ghanaian legislators in the face of constant interactions between them in the context of the ECOWAS Parliament, the Pan-African Parliament, and other inter-parliamentary forums.

THE JUDICIARY

The judiciary in Ghana, like most Ghanaians, is still pretty ultra conservative on GLBT issues, borne out of private cultural, religious, and other prejudices of individual judges. As already noted, an attempt to test the legality of GLBT practices in the Supreme Court would likely turn in a vote of 12 to 2 against them at best.

CHRAJ

The CHRAJ has vacillated quite a bit on the issue, including a change in position from support to ambivalence by the new and current Commissioner. The CHRAJ has stated that it has no official position on GLBTs. It, however, takes the position that as GLBTs are human beings just like any other persons, it has a responsibility to protect the existing rights of GLBTs. Understaffed in critical domains and underfunded, the CHRAJ seems to be saying that there are more priority areas in human rights for Ghana. Yet, ambivalence from the National Human Rights Commission on an issue that affects the rights of a significant subset of the population is almost a show of support to those who oppose GLBTs.

THE POLICE

The police do not only harass and intimidate GLBs, they are reluctant to act against persons who commit crimes against GLBs. Given their actions, it is clear that the institution does not recognise the rights of GLBTs. In fact, it consciously violates the rights of GLBTs and cannot be in support of them.

MINISTRY OF EDUCATION

The Ministry of Education, which superintends over half the population that is in School, and which has the highest budget of any Ministry, has recently issued a statement committing to eradicating GLBT practices in schools.

MINISTRY OF HEALTH

The Ministry of Health has no official position on GLBT issues. However, to the extent that GLBs are discriminated against in health institutions, mainly due to an attitude of caregivers that they deserve to be ill, we can say that the ministry is not supportive of GLBTs. Again, there is an absence of any official policy or action to target gays who are a particularly at risk subgroup of the populations as far as HIV/AIDs is concerned. This also points to silent discrimination against GLBTs and an anti-GLBT attitude in the Ministry.

CSOs

CSOs have been relatively quiet on GLBT issues. Compared to the numbers and force with which CSOs address other national issues and participate in national debates, their engagement with this particular debate is minuscule. A few progressive academics, human rights activists, reproductive health specialists, all associated with CSOs, including very respected persons, have individually and openly supported the rights of GLBTs, amidst overwhelming castigation from virtually everyone, including some of their own.

So far, the collective of view of this driver is that first and foremost GLBTs are human beings, and all human beings are entitled to have and enjoy their human rights. In sum, they take the position that GLBTs are entitled to enjoy all their human rights, with the possible exception of the right to sexual orientation, and should not be subject to any form of discrimination by virtue of their sexual orientation or preferences.

As much as they support efforts aimed at promoting the rights of minorities, CSOs acknowledge that GLBT issues are very sensitive in Ghana and should be approached cautiously.

FBOs

On the 13th of September 2011, the Christian Council of Ghana ended months of protest against the practice of homosexuality with a strongly worded message against the practice, and courting Ghanaians not to vote for any politician who believes in the rights of homosexuals. The National Chief Imam has also mentioned that homosexuality is not acceptable in the Muslim faith. So far, it seems that eliciting the help of this driver in causing any change in favour of GLBTs would be the hardest, as it is the most virulent of the homophobes in Ghana.

THE MEDIA

It is not apparent that the Ghanaian media has an official position on the issue of GLBTs. What is apparent is that the media is prepared to provide a platform for both the advocates and opponents of GLBTs rights to air their views and court support for their various positions. The media has generally followed and enlivened the debate and has not tried to set the agenda for the debate. Therefore, short of classifying them as part of the general public, it is difficult to assess how the media would react to GLBT issues as media, as contradistinguished from providing a channel for both sides of the divide to disseminate their views on it. The editors of some of Ghana's biggest newspapers have, however, been very critical of the GLBT movement.

TRADITIONAL AUTHORITY

Traditional Authority is in unanimous agreement that the practice of homosexuality should not be condoned in Ghana. This is consistent with their traditional and constitutional role as custodians of the culture of the people of Ghana, a culture which, for now, is deeply averse to GLBT practices. To them, the practice is not new, but has never been accepted in Ghanaian culture. Interviews conducted with certain traditional leaders reveal that any sexual behaviour other than heterosexuality is considered unacceptable and unnatural behaviour and contrary to the will of the gods. As a matter of fact, sexual behaviour other than heterosexuality is seen as a source of curses, not only to the persons engaged in the acts, but also to the clans of those persons and the society at large. Thus, persons who engaged in such conduct were severely punished, with the punishment sometimes extending beyond the culprits to their families or clans. The punishments range from heavy fines (the fines were used to perform sacrifices for the pacification of the gods), through ostracism, to death. Traditionally, persons found or suspected of having sexual relations with persons of the same sex, if not ostracized or put to death, were seen as lesser human beings and were, therefore, ridiculed and discriminated against in society. For example, homosexuals are invariably referred to in the Akan areas as “*kwadwobasia*”, namely woman-man, while lesbians are called “*supi-supi*”. Both terms are perceived to be highly offensive and derogatory. However, some traditional rulers are of the opinion that GLBTs should not be discriminated against in relation to employment, for example, although in such environments as places of work they should keep their sexual orientations to themselves and should not be allowed to influence others.

Flowing from the above, the National House of Chiefs is against the practice of homosexuality and takes the position that the practice is unacceptable. However, it seems to them that this position does not affect other rights of GLBTs such as their right to dignity, education, to work or to vote.⁵⁰

DEVELOPMENT PARTNERS

All the major Development Partners (DPs), flowing from their country Constitutions, aid and development assistance charters, and cooperation agreements, subsume GLBT issues under human rights, which is a major consideration in their aid and assistance strategies. They would rather that Ghana recognised fully the rights of GLBTs, but are apprehensive of being viewed as too pushy, lest they are accused of cultural imperialism and interference in the internal matters of a state. For this reason, many donors are cautious about making the GLBT issue a trigger within the framework of the MDBS.

The drivers of change are not discussed in any order of importance. The importance of these drivers of change with regards to the issue of GLBs is relative; depending on which of the recommendations STAR-Ghana decides to adopt.

RECOMMENDATIONS AND RISK ASSESSMENT

As stated earlier, STAR-Ghana is a multi-donor pooled funding mechanism which aims at increasing the accountability and responsiveness of government, traditional authorities and private enterprises to Ghanaians. The objective is to “increase the influence of civil society organizations and Parliament in the governance of public goods and service delivery.” STAR-Ghana is funded by its Development Partners (DP) and works primarily through Grant Partners to accomplish its objective. It builds on existing programmes undertaken by civil society organisations (CSOs), Parliament, the Media and the Private Sector. STAR-Ghana does not execute interventions.

Some Grant Partners and projects STAR-Ghana has funded include: the Institute of Economic Affairs (IEA) on a project aimed at strengthening the capacity of the Public Interest Accountability Committee (PIAC) in its oversight role in the management of Ghana’s

⁵⁰ Interview with Prof. J. S. Nabila, President of the National House of Chiefs, November, 2011 (notes available on file).

oil and gas resources; the Northern Network for Education Development (NNED) on a research on the Community Education Teaching Assistants (CETAs) component of the National Youth Employment Programme in 5 district in Northern Ghana; Ghana Network for Peace Building (GHANEP) on a project aimed at promoting effective collaboration and coordination on conflict prevention and transformation work both amongst civil society and between civil society and government in the Western Region; Ghana Federation of the Disabled (GFD), on a project aimed at supporting all Persons With Disabilities (PWDs) in accessing their entitlement to the DACF and to improve their livelihoods; Public Agenda, on a project aimed at providing a platform for consensus building between Parliament and the citizenry in the formulation stage of the oil and gas bills; Alliance For Reproductive Health Rights (ARHR) on a project meant to contribute towards building an accountable, transparent and responsive health system in Ghana; and Forest Watch Ghana (FWG), on civil society engagement with the state on the legislative reform processes in the Forestry Sector.

STAR-Ghana has also funded projects undertaken by the West Africa Aids Foundation (WAAF), a project purposed to increase the number of People Living with HIV/AIDS (PLHIV) currently on ARV treatment by 1% of the national target by obtaining a working policy document on equal pricing of ARVs; Media Foundation for West Africa (MFWA), on a project aimed at using radio to promote women's rights; and Dawah Academy (DAWAH), on a project aimed at improving education quality delivery in the Northern Region.

Flowing from the above findings and considerations, it is recommended to STAR-Ghana as follows:

1. STAR-Ghana should immediately ensure that *it maintains a broad and extensive definition of GESI in its programming*. Such a policy orientation would clearly capture the concerns of marginalised groups such as GLBTs. The proposed timeframe for this is January 2012. As an organisation which focuses on GESI, STAR-Ghana's programming would be deficient if it ignores the concerns of GLBTs, a significant and growing sub-population in Ghana. STAR-Ghana must be involved in GLBT issues in Ghana in the same manner it engages with the issues of other marginalised groups. It may encourage grant applicants to address explicitly the inclusion of sexual minorities in their programming. The proposed timeframe for this activity is **January 2012**.
2. STAR-Ghana should support a process of *conceptualising, designing, and developing highly illustrative information and educational packages and activities* for the various drivers of change on GLBT issues. Most of the negative attitudes towards GLBT issues are fuelled by misconceptions about different sexual orientations. All the arguments that are used to support the

various and strong anti-GLBT positions are either heavily contested or grossly wrong. All the arguments are also based on very limited information on critical matters such as the demographics, practices, and constitutional and legal position on GLBTs in Ghana. Few Ghanaians know, for example, that heterosexual oral sex, involving the penetration of a natural penis into a mouth, and sex by a gay couple are treated equally by the law, and that to be fair, public disdain and police action based on the law, should be equally strong against such oral sex as it is against 'gayism', or risk violating Article 17 of the Ghana Constitution. Similarly, few Ghanaians are aware that lesbianism is not a crime under Ghana law, for the simple reason that it does not involve a natural penis. A lot of clarification is needed to remove the cobwebs from the issues, steer the discussion of GLBT issues out of the domain of paucity of information and misinformation, and generally facilitate a more rigorous discussion of the issues. This is the only way to arrive at normative and policy conclusions whose scientificity is assured. The proposed timeframe for this activity is January to **June, 2012**.

3. STAR-Ghana should hold a *carefully facilitated series of sessions with its operational staff and its CSO partners* on GLBT issues as seen through GESI and the political-economy of change in Ghana. The draft version of the material for use in educating the drivers of change on GLBTs could be piloted in this context. This will serve as a preventive measure to curb condemnation, or even sabotage, from segments of its own staff and partners, in pro-GLBT programming. The proposed timeframe for this is **May 2012**.
4. STAR-Ghana should support a process of *sophisticated engagements and interventions with the drivers of change* on GLBT issues in order to conserve and improve the rights of GLBTs in Ghana and in particular, to ensure that they are not discriminated against as equal members of the body politic. The proposed timeframe for this activity is from **January 2013**.
 - a. STAR-Ghana can achieve this by supporting research that will assist in clarifying and addressing GLBT issues.
 - b. STAR-Ghana should expand its intramural and extramural training programs, focusing on three audiences: researchers who are working with or considering working with GLBTs populations; researchers who may not be aware of GLBT rights issues; and STAR-Ghana staff.
 - c. Education is one of the most effective tools utilized in influencing attitudes. By providing distilled information, people are better informed on issues. It is important that STAR-Ghana adopts education as one of its foremost tool in working with the different drivers of change on GLBT issues, especially the general public. This may be achieved by supporting media in

providing information on GLBT issues; supporting programmes in educational institutions aimed at educating students on sexual orientation and the misconceptions surrounding GLBT issues; and using social events as platforms to educate the populace.

STAR-Ghana would receive tremendous support in its GLBT programming from a small number of progressive academics, CSO operatives, and human rights activities and also from the DPs, even if the support from DPs is less overt than usual. STAR-Ghana must intentionally and strategically build on these opportunities.

On the other hand, STAR-Ghana would receive overwhelming opposition and incur the hatred and scorn of the broad majority of Ghanaians, from the Presidency to the common woman, in any programming it engages in relating to GLBTs. This is because GLBT issues do not enjoy favourable national institutional and popular support. It is anticipated, for example, that Ghanaians may gather outside a radio station discussing pro-GLBT issues and wait for the panelists to get out and proceed to beat or even kill them.

Further, considering that 2012 is an election year, politicians are more inclined to appear homophobic in step with the general public, even if they feel differently, in order to secure votes in the elections. Thus, the best strategy will be to spend most of 2012 on internal preparations, in terms of packaging the ‘message’; working on STAR staff and partners; and planning the various interventions with the drivers of change. Engagement with the drivers of change could then commence in 2013.

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APPENDIX

INTERVIEW GUIDE

INTERVIEW/DISCUSSION GUIDE FOR SCOPING STUDY ON GLBT ISSUES IN GHANA

1. What is your understanding of the following?
 - a. Gay
 - b. Lesbian
 - c. Bisexual
 - d. Trans-sexual/Trans-gender
2. Do you know any gay, lesbian, bisexual and transsexual person in Ghana?
If yes, have you come into contact with any of them?
3. Do you consider GLBTs to be disordered persons or as persons expressing their innate sexual preference?
4. Should the laws of Ghana be amended to provide for issues of GLBT?
5. Should the laws of Ghana clarify how the issues of GLBTs should be handled?
6. Should the State make laws that invade the privacy of consenting adults?
7. Do you consider that GLBTs are discriminated against in Ghana because of their sexual orientation?
 - a. discrimination in the Health sector
 - b. discrimination in the Education sector
 - c. discrimination in the financial sector

d. Others

8. Should Ghana recognize the right of GLBTs to freely practice and express their sexual orientation?
9. To what extent should the Rights of GLBTs be recognized in Ghana?
10. Should government take any measure, positive or negative, to address issues on GLBTs?
11. Should CSO take any measures positive or negative to address GLBTs issues in Ghana?
12. Do you know of any interventions by government or CSOs to address issues of GLBT in Ghana?
13. What are the risks of any pro-GLBTs activities?
14. Have you ever stopped yourself from doing or saying something because you might be perceived as gay or lesbian?
15. How will you feel if a family member confessed to be a homosexual?
16. Do you think that a homosexual should not be allowed to hold certain jobs or social positions in Ghana? Give reasons for your answer.
17. Are there any ways to create a safe environment for homosexuals in Ghana; if so how?